REMARKS

Claims 1-26 are pending in the application. By this Amendment Applicant has amended claims 1, 11, 18 and 24 in the manner discussed below.

Claim Objections

In response to the objection to claims 18-23, Applicant has amended claim 18 in the manner suggested by the Examiner.

Claim Rejections Under 35 U.S.C. §103

The Examiner has rejected claims 1, 2, 5, 8-12, 14-19 and 21-26 under 35 U.S.C. §103 as being unpatentable over Orman et al. in view of Rostowfske et al.

In the above Office Action the Examiner admits that Orman does not explicitly teach, among other things, withholding acknowledgment of receipt of the data at the proxy element until a predefined operation involving the data has been performed. However, the Examiner argues that:

> ...Rostowfske teaches, withholding acknowledgment of receipt of the data at the proxy element (Col 7 lines 26-35) until a predefined operation involving the data has been performed (the primary server (proxy element) will not return an acknowledge if the primary fails to complete operation)....

That is, the Examiner appears to argue that the act of receiving the data in the Rostowfske system corresponds to the claimed "predefined operation involving the data". In this regard Applicant respectfully submits that the data must be received before it can be manipulated in a predefined operation as presently claimed. However, even accepting for purposes of discussion the Examiner's position that receiving data corresponds to a predefined operation involving the data, the Examiner has not demonstrated how Rostowfske in any way withholds an acknowledgment of receipt of the data. Applicant respectfully submits that something may not be "withheld" if it does not yet exist. Clearly in the Rostowfske system an acknowledgment of receipt does not exist unless and until data has been received. So if an acknowledgment is incapable of existing in the Rostowfske system until the data has been received, then Rostowfske cannot and does not describe withholding such an acknowledgment since in the Rostowfske system such acknowledgment is sent immediately upon receipt of the data (i.e., there is no opportunity for

"withholding", since there is nothing to "withhold" prior to receipt of the data). The Examiner's statement that an acknowledgement is not sent in the Rostowfske system until data has been received in no way demonstrates the practice of the affirmative act of withholding an acknowledgment that could have been previously sent (since in the Rostowfske system an acknowledgement message cannot exist unless and until the data has been received).

Notwithstanding these distinctions between the claimed invention and Rostowfske, in order to advance prosecution of the application the independent claims have been amended to recite that the predefined operation involving the data is performed subsequent to the receipt of the data; that is, that the receipt of the data and the predefined operation comprise distinct operations. Rostowfske shows nothing other than receiving the data and sending an acknowledgment upon the receipt, and thus in fact teaches away from the invention as presently claimed by automatically sending an acknowledgment immediately upon the receipt of data and prior to otherwise processing the received data.

Accordingly, Applicant respectfully requests reconsideration of the outstanding rejection of claims 1, 2, 5, 8-12, 14-19 and 21-26 under 35 U.S.C. §103 as being unpatentable over Orman et al. in view of Rostowfske et al.

The Examiner has also rejected claims 3, 4, 6, 7, 13 and 20 under 35 U.S.C. §103 as being unpatentable over Orman et al. in view of Rostowfske et al and further in view of Serex et al. Because Serex does not remediate any of the deficiencies of Rostowfske with respect to the claimed invention described above, Applicant also requests reconsideration of claims 3, 4, 6, 7, 13 and 20.

Conclusion

Applicant respectfully requests consideration of the remarks herein prior to further examination of the above-identified application. The undersigned would of course be available to discuss the present application with the Examiner if, in the opinion of the Examiner, such a discussion could lead to resolution of any outstanding issues.
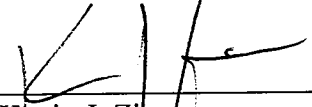
The Director is hereby authorized to charge any appropriate fees under 37 C.F.R.§§ 1.16, 1.17, and 1.21 that may be required by this paper, and to credit any overpayment, to Deposit Account No. 50-1283.

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Cooley Godward Kronish LLP
777 6th Street, NW
Suite 1100
Washington, DC 20001
Phone: (858) 550-6000
Fax: (202) 842-7899

Respectfully submitted,
COOLEY GODWARD LLP

By: _____
Kevin J. Zimmer
Reg. No. 36,977

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